

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE EZRA B.)
) 2 CA-JV 2009-0031
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17590301

Honorable Danelle Liwski, Judge Pro Tempore

AFFIRMED

Barbara LaWall, Pima County Attorney
By Ellen R. Brown

Tucson
Attorneys for State

Nuccio & Shirly, P.C.
By Jeanne Shirly

Tucson
Attorneys for Minor

E C K E R S T R O M, Presiding Judge.

¶1 After a hearing, the juvenile court found then fourteen-year-old Ezra B. had committed the offenses of robbery and aggravated robbery and adjudicated him delinquent.

The court placed Ezra on juvenile intensive probation supervision for one year. On appeal, Ezra contends the evidence was insufficient to sustain the court's finding that he committed the offenses. We affirm.

¶2 To establish that Ezra committed aggravated robbery, the state was required to prove that, aided by one or more accomplices, he took the victim's property from his person or immediate presence and against his will by threatening or using force with the intent either to coerce the victim to surrender the property or to prevent the victim from resisting or retaining the property. *See* A.R.S. §§ 13-1902, 13-1903. When reviewing a delinquency adjudication, "we will not re-weigh the evidence, and we will only reverse on the grounds of insufficient evidence if there is a complete absence of probative facts to support the judgment or if the judgment is contrary to any substantial evidence." *In re John M.*, 201 Ariz. 424, ¶ 7, 36 P.3d 772, 774 (App. 2001). We view the evidence in the light most favorable to sustaining the adjudication. *In re Julio L.*, 197 Ariz. 1, ¶ 6, 3 P.3d 383, 384-85 (2000). So viewed, the evidence presented at the adjudication hearing established the following.

¶3 The victim was approached by a group of five youths as he was walking to a transit center in downtown Tucson after having consumed three to four beers at a nearby bar. The youths hit the victim on the back of his head and on his nose and removed his backpack, after which the victim relinquished his wallet. They then left with the wallet and some personal items belonging to the victim. During the attack, the victim was able to get "a pretty

good look” at the individuals in front of him and on his left; at the adjudication hearing, the victim testified that he “believe[d]” Ezra was the attacker on his left. The victim also testified that, although he was “a bit foggy” as a result of the attack, he had described the suspects to the police “[a]s best [he] could.”

¶4 Tucson Police Department Officer Nate Winston testified that Ezra had identified himself using a “couple of different names.” Ezra also provided inconsistent information regarding his address. Winston testified further that Ezra had told him he had “socked that fool [the victim],” that his “homies had [his] back,” and that the victim “didn’t do anything because [Ezra’s friends] were there and they were going to be on [the victim].” Detective Dave Huser testified that Ezra had told him the victim had been struck because he would not relinquish his wallet. Ezra told Huser the victim’s wallet was blue even before Huser had retrieved it; Ezra also directed Huser to the exact location of the wallet. He also told Huser “his other homies had struck the victim” and identified two of the other youths who had been detained as “his homies.” He admitted to Huser that he had “made a comment” to Winston about having struck the victim and explained that he had done so to protect the other suspects, whom he then refused to identify.

¶5 One of the police reports stated Ezra had admitted to the police that he had “punched the victim and t[aken] his bag, and . . . identified [two other members of the group] as [having been] with him.” Similarly, Huser stated in his written report that Ezra had “initially denie[d] any involvement [in the incident] but later admit[ted] to officers that he

struck the victim in the face while his ‘homies’ stood by and backed him up.” Although Ezra identified two of the suspects as his “homies,” Huser also stated in his report that he later recanted his statements to the police.

¶6 Ezra testified at the adjudication hearing. Although he initially said the victim had been “hit over there where I was,” he then stated he had not seen anything and denied any involvement in the incident. He explained that he had been able to tell the officers the color of the victim’s wallet because it had “almost” hit him when the attackers “threw it in back of them.” Ezra denied having admitted or having recanted his statement that he had hit the victim. Instead, he suggested the officers fabricated their testimony.

¶7 At the conclusion of the adjudication hearing, the juvenile court rejected Ezra’s testimony as reflected below:

Ezra, this is the problem I have with your side of the story. I have three different witnesses . . . all saying you were involved. . . . I have a hard time believing the officer made that statement up furthered by another officer making up more statements furthered by the victim making up statements. I think all of that taken together and the credibility of each of those witnesses, I’m going to find you guilty of both of these counts.

¶8 Based on the juvenile court’s comments at the end of the adjudication hearing, it had considered the evidence before finding that Ezra was culpable of the charged offenses. Because “personal observation of witnesses is crucial to accurate fact-finding when the outcome of a juvenile delinquency adjudication depends on an assessment of the credibility of the witnesses,” we defer to the court as the finder of fact. *In re Pima County Juv. Action*

No. 63212-2, 129 Ariz. 371, 375, 631 P.2d 526, 530 (1981). The court is in the best position to assess the credibility of witnesses. *See In re Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). The court's decision in this case depended on its assessment of each witness's credibility, and we will not reweigh that evidence on review. *John M.*, 201 Ariz. 424, ¶ 7, 36 P.3d at 774.

¶9 Because substantial evidence supported the juvenile court's findings, we affirm its order adjudicating Ezra delinquent and the disposition.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge